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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

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THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM TIPTON et al.,

Defendants and Appellants.

C083065

(Super. Ct. No.  
STKCRFECOD20100007444,  
STKCRFECOD20100007445,  
SF116279A, SF116279B)

Defendants William and Frayba Tipton appeal following their convictions for insurance fraud and perjury, both contending the probation minutes should be corrected to reflect which monetary orders are conditions of probation. The People properly concede this point. The People contend the minute orders should also be corrected to correctly reflect the fines imposed at the sentencing hearing, not those reflected in later ex parte minute orders. Defendants correctly contend the trial court corrected the restitution fines to the appropriate statutory minimum. We order the trial court to correct the minute orders to reflect that the criminal conviction assessments, court security fees,

and surcharges are not conditions of probation and to reflect imposition of an \$80 court security fee. The judgments are otherwise affirmed.

## **I. BACKGROUND**

After a fire destroyed defendant William and Frayba Tipton's home, they filed an insurance claim in which they overstated losses related to the contents of their home. William and Frayba both pleaded guilty to insurance fraud (Pen. Code, § 550, subd. (a)(1))<sup>1</sup> and no contest to perjury (§ 118). In accordance with the pleas, the trial court suspended imposition of sentence and placed both Frayba and William on five years' probation. The trial court ordered each defendant to pay \$300 restitution fines (§ 1202.4, subd. (b)), and imposed and stayed identical probation revocation fines (§ 1202.44), plus a 10 percent surcharge (§ 1202.4, subd. (l)), \$60 conviction assessment fees (Gov. Code, § 70373), and \$80 court security fees (§ 1465.8), for total fines of \$470.

In response to a *Fares/Clavel*<sup>2</sup> letter seeking correction of the minute orders to indicate the statutory bases for the fines and fees ordered, the trial court issued ex parte minute orders. The minute orders stated the statutory bases of the fees and indicated the imposed section 1202.4 restitution fines and corresponding probation revocation fines were \$200. In response to a second *Fares/Clavel* letter seeking clarification that the conviction assessments, court security fees, and 10 percent surcharges were not conditions of probation, the trial court issued second ex parte minute orders.

## **II. DISCUSSION**

### **A. Conditions of Probation**

Defendants contend, and the People properly concede, that the court security fees (§ 1465.8), conviction assessments (Gov. Code, § 70373), and 10 percent surcharges

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

<sup>2</sup> *People v. Fares* (1993) 16 Cal.App.4th 954; *People v. Clavel* (2002) 103 Cal.App.4th 516.

(§ 1202.4, subd. (l)) may not be imposed as conditions of probation. We accept the concession and will direct the trial court to modify the minute orders to clarify this point. (*People v. Kim* (2011) 193 Cal.App.4th 836, 842.)

*B. Statutory Fines*

The People contend the trial court erred in unilaterally reducing the restitution fines imposed at sentencing and erroneously reduced the court security fees (§ 1465.8, subd. (a)). As to the restitution fines, defendants counter that the trial court was correcting its earlier error in imposing the incorrect statutory minimum restitution fines. We agree with defendants. Defendants make no argument regarding the court security fees, and we agree with the People the probation orders must be corrected to reflect court security fees of \$80, \$40 per conviction.

“[A] court retains power to modify a sentence at any time prior to execution of the sentence. (*People v. Karaman* (1992) 4 Cal.4th 335, 344, 347, 350, 352.)” (*Hilton v. Superior Court* (2014) 239 Cal.App.4th 766, 771.) On taking the pleas, the trial court stated defendants would be subject to statutory minimum restitution fines of \$300. At sentencing, the trial court indicated the prosecutor had stated the statutory minimum fine was \$220, but that the current statutory minimum restitution fine was \$300, so that was the amount the court imposed. It is clear on this record, the trial court intended to impose the statutory minimum and mistakenly believed that minimum was \$300, not \$200. (Stats. 2008, ch. 468, § 1, p. 3341, eff. Sept. 27, 2008.) The ex parte orders corrected the oral orders and conformed them to the trial court’s intended sentence. Because imposition of sentence was suspended and defendants were placed on probation, the trial court retained jurisdiction to modify the orders granting probation. The trial court did not err in correcting the restitution fine orders from \$300 to \$200.

“Where there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract of judgment, the oral pronouncement controls.” (*People v. Zackery* (2007) 147 Cal.App.4th 380, 385.) Here, the oral judgment reflects the trial

court imposed \$40 court security fees per count. The amended minute orders reflect only a single \$40 court security fee as to each defendant. Accordingly, we will order the orders corrected to reflect the orally pronounced judgment.

### **III. DISPOSITION**

The orders of May 3, 2018, are modified to reflect that the court security fees imposed under section 1465.8, the court facilities assessments imposed under Government Code section 70373, and the surcharges imposed under section 1202.4, subdivision (*l*) are separate orders and not conditions of probation. The orders are also corrected to reflect imposition of an \$80 court security fee, \$40 per count. In all other respects, the judgments are affirmed.

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RENNER, J.

We concur:

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ROBIE, Acting P. J.

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DUARTE, J.